

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 5. Standards for Motor Vehicle Fuels

Article 1. Standards for Gasoline

Subarticle 1. Gasoline Standards That Became Applicable Before 1996

§ 2258. Oxygen Content of Gasoline in the Wintertime.

(a) Regulatory Standard.

(1) Starting November 1, 1992, within each of the air basins during the regulatory control period set forth in section (a)(2), no person shall sell, offer for sale, supply, offer for supply, or transport California gasoline unless the gasoline has an oxygen content of not less than 1.8 percent by weight and not more than 2.2 percent by weight.

(2) Regulatory Control Periods.

(A) October 1 through February 29

South Coast Air Basin and Ventura County

(B) October 1 through January 31

Sacramento Valley Air Basin

San Joaquin Valley Air Basin

San Francisco Bay Area Air Basin

Lake Tahoe Air Basin

Great Basin Valley Air Basin

Mountain Counties Air Basin

North Coast Air Basin

Lake County Air Basin

Northeast Plateau Air Basin

North Central Coast Air Basin

San Luis Obispo County

(C) November 1 through February 29

San Diego Air Basin

Southeast Desert Air Basin

Santa Barbara County

(3) Section (a)(1) shall not apply to transactions involving gasoline not meeting the minimum oxygen content standard where the person selling, supplying, or offering the gasoline demonstrates by affirmative defense that: [i] the gasoline has not yet been supplied from the final distribution facility, and [ii] the documents accompanying such gasoline clearly state that it does not comply with the minimum oxygen content standard in section (a)(1), and either [iii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline within the standards in section (a)(1) before it is supplied from the final distribution facility, or [iv] at or before the time of the transaction the person has obtained a written statement from the purchaser, recipient, or offeree of the gasoline stating that he or she will take reasonably prudent precautions to assure that the gasoline is brought within the standards of section (a)(1) before it is supplied from the final distribution facility.

(4) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that, prior to the transaction, he or she has taken reasonably prudent precautions to assure that the gasoline will be delivered to a retail service station or bulk purchaser-consumer's fueling facility when the station or facility is not subject to a basic regulatory control period.

(5) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the last delivery of gasoline to the stationary storage tank occurred more than fourteen days before the start of the regulatory control period.

(6)(A) The regulatory standards in section (a)(1) shall not apply to a transaction occurring in the air basin during a transition period, where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that he or she has made, prior to the transaction, specific arrangements with a gasoline distributor for the delivery of an oxygenated or nonoxygenated gasoline blend containing oxygenates in quantities that will result in gasoline in

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the stationary storage tanks at the facility having an oxygen content of from 1.8 percent to 2.2 percent by weight by the end of the transition period.

(B) The regulatory standards in section (a)(1) shall not apply to a transaction occurring in an air basin during a transition period, where the transaction involves the sale, offer for sale, supply, offer for supply, or transport of gasoline to a retail gasoline outlet or bulk purchaser-consumer's facility and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the gasoline is being distributed pursuant to a prior arrangement to deliver oxygenated or nonoxygenated gasoline to bring the retail gasoline outlet or bulk purchaser-consumer's facility into compliance with the regulatory standards in section (a)(1) by the end of the transition period.

(7) Section (a)(1) shall not apply to a transaction involving the sale, offer for sale, supply, or offer for supply of gasoline to a stationary storage tank at a retail gasoline outlet, or the transfer of gasoline from a stationary storage tank at a retail gasoline outlet to a motor vehicle fuel tank, if the person selling, offering, or supplying the gasoline demonstrates by affirmative defense all of the following:

(A) The retail gasoline outlet is within Modoc, Lassen, Sierra, Nevada, Placer, El Dorado, Alpine, Mono, Inyo, or San Bernardino counties, and is not within the Lake Tahoe or Sacramento Valley Air Basins.

(B) The final distribution facility from which the gasoline is being or has been delivered is outside California.

(C) The gasoline is being or has been delivered to the stationary storage tank by a tank truck having a total capacity not exceeding 4500 gallons.

(D) The stationary storage tank at the retail gasoline outlet has a total capacity not exceeding 2500 gallons, and

(E) The retail gasoline outlet has a monthly throughput not exceeding 10,000 gallons.

(8) For the purposes of section (a)(1), each sale of California gasoline at retail, and each dispensing of California gasoline into a motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of section (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Bulk purchaser-consumer" means a person who purchases or otherwise obtains gasoline in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(2) "California gasoline" means gasoline sold or intended for sale as a motor vehicle fuel in California.

(3) "Distributor" means any person engaged in the business of transporting and delivering gasoline to a retail gasoline outlet or bulk purchaser-consumer's facility.

(4) "Final distribution facility" means the stationary gasoline transfer point from which gasoline is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the gasoline will be delivered to the facility at which the gasoline will be dispensed into motor vehicles; except that a cargo tank truck is the final distribution facility where the cargo tank truck is used to transport gasoline and carries written documentation demonstrating that oxygenates, in quantities that will bring the gasoline into compliance with section 2258(a)(1), will be or have been blended directly into the cargo tank truck prior to delivery of the gasoline from the cargo tank truck to the facility at which the gasoline will be dispensed into motor vehicles.

(5) "Gasoline means any fuel which is commonly or commercially known or sold as gasoline.

(6) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.

(7) "Northern California" means the area of California not contained within the South Central Coast, South Coast, Southeast Desert and San Diego Air Basins.

(8) "Southern California" means the area of California contained within the South Central Coast, South Coast, Southeast Desert and San Diego Air Basins.

(9) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(10) "Transition period" means:

a. the first 15 days of any October regulatory control period.

b. November 1 to November 15, 1992, and

c. November 1 through November 15 of 1993, 1994, or 1995 in the San Diego Air Basin, the Southeast Desert Air Basin, and Santa Barbara County.

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(c) Sampling Procedures and Test Methods.

Compliance with the oxygen content standards in this regulation shall be determined by use of an applicable sampling methodology set forth in Title 13, California Code of Regulations, section 2296, and use of American Society for Testing and Materials Test Method ASTM D 4815-94, which is incorporated herein by reference. Another test method may be used following a determination by the executive officer that the other method produces results equivalent to the results obtained with ASTM D 4815-94.

(d) Inability to Produce Conforming Gasoline in Extraordinary Circumstances.

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner, importer, or oxygenate blender and which could not have been avoided by the exercise of prudence, diligence, and due care, the executive officer may permit a refiner, importer, or oxygenate blender, for a brief period, to distribute gasoline which does not meet the requirements in section (a)(1) if:

(1) It is in the public interest to do so (e.g., distribution of the nonconforming gasoline is necessary to meet projected shortfalls which cannot otherwise be compensated for);

(2) The refiner, importer, or oxygenate blender exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;

(3) The refiner, importer, or oxygenate blender can show how the requirements for oxygenated gasoline will be expeditiously achieved;

(4) The refiner, importer, or oxygenate blender agrees to make up air quality detriment associated with the nonconforming gasoline, where practical; and

(5) The refiner, importer, or oxygenate blender pays to the Air Pollution Control Fund an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to section (d)(4), in making up the air quality detriment.

(e) Effect of Supply Waiver Under Federal Clean Air Act.

(1) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas of California, the requirements of section (a)(1) shall not apply in any air basin containing an area covered by the waiver, during the effective period of the waiver.

(2) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas within Southern California, section (a)(1) shall not apply, during the effective period of the waiver, in any air basin in Southern California not containing any area required under 42 U.S.C. section 7545(m) to have a wintertime oxygenates program.

(3) If the Administrator of the U.S. Environmental Protection Agency issues, pursuant to 42 U.S.C. section 7545(m)(3)(C), a waiver of the requirements of 42 U.S.C. section 7545(m)(2) applicable to a geographic area or areas within Northern California, section (a)(1) shall not apply, during the effective period of the waiver, in any air basin in Northern California not containing any area required under 42 U.S.C. section 7545(m) to have a wintertime oxygenates program.

(f) Sunset. This section shall not apply to gasoline sold or supplied after February 29, 1996.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

REFERENCE